

EXHIBIT

C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

UNITED STATES OF AMERICA, ex rel.)
DILBAGH SINGH, M.D., PAUL KIRSCH,)
M.D., V. RAO NADELLA, M.D., and)
MARTIN JACOBS, M.D.,)
)
Relators,)
) Civil Action
vs.) No. 04-186E
)
BRADFORD REGIONAL MEDICAL CENTER,)
V&S MEDICAL ASSOCIATES, LLC,)
PETER VACCARO, M.D., KAMRAN SALEH,)
M.D., and DOES I through XX,)
)
Defendants.)

DEPOSITION OF PAUL B. KIRSCH, M.D.

MONDAY, AUGUST 20, 2007

14 Deposition of PAUL B. KIRSCH, M.D., called as a
15 witness by the Defendant Bradford Regional Medical
16 Center, taken pursuant to Notice of Deposition and the
17 Federal Rules of Civil Procedure, by and before Joy A.
18 Hartman, a Court Reporter and Notary Public in and for
19 the Commonwealth of Pennsylvania, at the offices of
20 Stone Law Firm, 1400 Allegheny Building, Pittsburgh,
21 Pennsylvania, commencing at 2:50 p.m. on the day and
22 date above set forth.

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1 assume that you understood the question, and that you
2 answered the question truthfully, and that the
3 information you are giving is complete.

4 If you need to take a break, let me know. Is
5 this okay with you?

6 A. Yes, it is.

7 Q. Now, do you understand the nature of the oath
8 you just took?

9 A. Yes, I do.

10 Q. And are you under the influence of any
11 substance that would impair your memory or your
12 ability to testify truthfully today?

13 A. No, I am not.

14 MR. MULHOLLAND: Before we get into
15 specific questions, I would like to propose a
16 stipulation, that I would ask Dr. Kirsch the
17 same questions that I asked Dr. Nadella on the
18 deposition just concluded, to which counsel for
19 the Relators interposed objections and
20 instructed Dr. Nadella not to answer.

21 This would be for the purpose of, again,
22 certifying the same questions with respect to
23 Dr. Kirsch to the Court for further review.

1 That would be, of course, other than some
2 questions to which you objected that only had
3 to deal with Singh & Nadella. I think there
4 were a couple of those.

5 MR. STONE: I think there may have been a
6 couple. We would agree that we would have the
7 same objection and the same instruction not to
8 answer the same questions that are being
9 propounded to Dr. Kirsch that were propounded
10 to Dr. Nadella.

11 MR. RYCHCIK: I would, obviously, like to
12 join in that, as well, because there were some
13 questions that I asked, as well.

14 MR. MULHOLLAND: And we would, of course,
15 reserve our right to propose those questions
16 again to the extent that the Court ruled that
17 we were able to.

18 MR. STONE: Agreed.

19 MR. MULHOLLAND: Thank you.

20 Q. Dr. Kirsch, just for our records, what is your
21 home address?

22 A. 601 Hedgehog Lane, Bradford, Pennsylvania.

23 Q. Your home phone number, please?

1 A. That's correct.

2 Q. At one time, did you or Foster Brook employ a
3 Dr. Syed Ali?

4 A. Yes.

5 Q. Did you have an agreement with the Medical
6 Center regarding Dr. Ali's practice in your office?

7 MR. STONE: I'm going to object to the
8 extent that, again, this is getting into an
9 area which involves Dr. Kirsch's business
10 relationships with other entities, which are
11 not the subject of the complaint and are,
12 therefore, irrelevant and the subject of Judge
13 Cohill's prior order.

14 MR. MULHOLLAND: And you are instructing
15 him not to answer?

16 MR. STONE: I direct him not to answer.

17 (Question certified for later discussion.)

18 Q. Then, for the record, let me ask you two other
19 questions regarding that. Doctor, did you have any
20 agreement with Bradford Regional Medical Center
21 regarding the use of space, facilities, or personnel
22 for Dr. Ali?

23 MR. STONE: Again, I will object and

1 instruct him not to answer.

2 (Question certified for later discussion.)

3 Q. Was there a dispute between you and Bradford
4 Regional Medical Center over the termination of any
5 agreement that you may have had regarding Dr. Ali?

6 MR. STONE: Again, I will object and
7 instruct him not to answer.

8 (Question certified for later discussion.)

9 Q. Dr. Kirsch, at the present time, do you
10 consider yourself to be a competitor of Dr. Saleh or
11 Dr. Vaccaro?

12 A. No.

13 Q. Is it your understanding that they practice
14 internal medicine in Bradford just as you do?

15 A. That's correct.

16 Q. And you don't view yourself as a competitor?

17 A. No.

18 Q. Why not?

19 A. Because I, basically, have a full practice, and
20 I'm as busy as I want to be, and I don't think they
21 take my patients, and I'm not looking to take their
22 patients, so I don't feel there is any competition
23 whatsoever.

1 A. Hamot Medical Center, Erie, Pennsylvania; St.
2 Vincent's Hospital, Erie, Pennsylvania; University of
3 Pittsburgh Medical Center, Pittsburgh; Buffalo General
4 Hospital, Buffalo, New York; Millard Fillmore
5 Hospital, Buffalo, New York; Strong Memorial Hospital,
6 Rochester, New York; Cleveland Clinic, Cleveland. I
7 think that is about it.

8 Q. What criteria, if any, do you use to decide
9 where to refer a patient for nuclear cardiology
10 studies?

11 MR. STONE: I'm going to object to any
12 further question with regard to Dr. Kirsch's
13 business relationships with any entities as
14 again being irrelevant and subject to Judge
15 Cohill's order.

16 MR. MULHOLLAND: I wasn't asking for
17 business relationships. I was asking for
18 criteria that he uses as to where a patient
19 should go.

20 MR. STONE: Again, it is not relevant to
21 the case because this is about V&S and an
22 illegal arrangement that V&S had with BRMC, and
23 what Dr. Kirsch does is irrelevant to this

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1 case.

2 MR. MULHOLLAND: And are you instructing
3 him not to answer?

4 MR. STONE: I am instructing him not to
5 answer.

6 MR. MULHOLLAND: Will you please mark that
7 as a page to be certified?

8 (Question certified for later discussion.)

9 Q. Dr. Kirsch, are you a participating physician
10 in the Federal Medicare program?

11 A. Yes, I am.

12 Q. Are you a participating physician in the
13 Pennsylvania Medical Assistance program?

14 A. No, I am not.

15 Q. Have you ever been a participating physician in
16 the Pennsylvania Medical Assistance?

17 A. No, I have never been.

18 Q. Doctor, I'm going to ask that you take a look
19 at the document that was previously introduced and
20 marked as Exhibit 1 at Dr. Nadella's deposition. This
21 is a copy of the Complaint that was filed in this case
22 by you and the other Relators.

23 MR. RYCHCIK: The Complaint is actually

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1 Q. In paragraph 4, you refer to allegedly illegal
2 financial relationships. Are you referring to the
3 nuclear camera lease in this statement?

4 A. Yes.

5 Q. Are you referring to any other financial
6 relationship between the Medical Center and any other
7 doctor in this paragraph?

8 A. No.

9 Q. In paragraph 5, you allege that the defendants
10 made false statements to the Government when
11 submitting claims to Medicare. Can you identify any
12 specific false statement or false claim that was
13 submitted by the Medical Center to Medicare or
14 Medicaid?

15 A. I have no knowledge of what they submitted.

16 Q. Let me ask, because I didn't think that you
17 objected to this, Mr. Stone, but in paragraph 11 you
18 refer to a statement of material evidence that you and
19 the Relators filed with the Government when you filed
20 the Complaint. Have you seen this statement of
21 material evidence?

22 A. I don't remember.

23 Q. Do you recall any of the contents of the

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1 statement of material evidence?

2 MR. STONE: Again, I'm going to object to
3 the extent that you are asking about the
4 communication with the Government. I instruct
5 him not to answer the question.

6 MR. MULHOLLAND: Again, this would be
7 subject to the same stipulation we entered into
8 at the beginning of the deposition.

9 MR. STONE: That is correct.

10 (Question certified for later discussion.)

11 Q. Doctor --

12 MR. STONE: Just so it is also clear, to
13 the extent that you have questions about the
14 facts of the complaint, which is the subject
15 matter of the disclosure statement, I don't
16 have a problem with your asking questions about
17 the underlying subject matter.

18 What I have an objection to is the
19 contents of the disclosure that was provided to
20 the Government.

21 Q. Dr. Kirsch, do you recall the subject matter of
22 the disclosure made to the Government?

23 A. Yes.

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1 Q. It is the July 8th letter, yes. If you could
2 take a look at that, and let me know when you have had
3 a chance to review it?

4 A. Okay.

5 Q. Have you seen this document before?

6 A. Yes.

7 Q. Do you recall receiving a document with similar
8 identical contents from this from Mr. Leonhardt on or
9 about the date that is on that letter?

10 A. Yes.

11 Q. Did you understand it to be his response to
12 your response to his letter?

13 A. Yes.

14 Q. Did you read it when you received it?

15 A. Yes, I did.

16 Q. Doctor, I can anticipate that this may be
17 subject to an objection, but I want to get it on the
18 record because it is different than questions I asked
19 Dr. Nadella.

20 Do you have any present plans to offer nuclear
21 cardiology or imaging services in either Bradford or
22 Olean in conjunction with Summit Health Care or anyone
23 else?

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1 MR. STONE: I will object to that as being
2 irrelevant and for the reasons stated
3 previously as not discoverable under Judge
4 Cohill's prior order, and I will direct the
5 witnesses not to answer.

6 (Question certified for later discussion.)

7 Q. Are Drs. Singh and Nadella and/or Dr. Horsley
8 involved in any planned offering of imaging services
9 by you in Olean or Bradford?

10 MR. STONE: Again, I will object and
11 instruct the witness not to answer.

12 (Question certified for later discussion.)

13 Q. Do you have any plans at the present time to
14 share office space or to rent office space from Dr.
15 Singh and Dr. Nadella?

16 MR. STONE: Again, I will object and
17 direct the witness not to answer.

18 (Question certified for later discussion.)

19 Q. Do you recall discussions, Doctor, during the
20 2002-2003 time period regarding the proposed joint
21 venture with the medical staff to offer services under
22 arrangements?

23 A. Yes.

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1 A. Besides all of them?

2 Q. All of them?

3 A. Yes.

4 Q. Aside from the differences of opinion that you
5 have with the hospital that are expressed in this
6 lawsuit, do you have any other dispute with the
7 hospital or members of its Board of Directors?

8 A. I would love to go into details, but I don't
9 think it is relevant.

10 MR. STONE: I am going to object to any
11 other disputes that the doctor may or may not
12 have with the hospital.

13 MR. MULHOLLAND: And instruct him not to
14 answer?

15 MR. STONE: Yes.

16 (Question certified for later discussion.)

17 Q. Doctor, in response to the interrogatories that
18 were propounded by the Medical Center, you stated you
19 had a consultant relationship with St. Vincent
20 Hospital; is that correct?

21 MR. STONE: I'm going to object to that,
22 again, for the same reasons we have previously
23 stated. Any arrangements that Dr. Kirsch may

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1 refer to Tri-County Diagnostic?

2 MR. STONE: Objection. I direct him not
3 to answer.

4 Q. You stated that you had a problem with the
5 Board of Directors, but you seemed to qualify that
6 statement with respect to George Leonhardt. Do you
7 have any personal animosity or dispute with George
8 Leonhardt?

9 A. I don't want to answer that question. I don't
10 think it pertains to --

11 MR. STONE: I will object and direct you
12 not to answer.

13 (Question certified for later discussion.)

14 MR. MULHOLLAND: I don't have any other
15 questions for Dr. Kirsch at this time, again
16 subject to the stipulation we talked about
17 before.

18 MR. RYCHCIK: If we could take a break, I
19 would appreciate it.

20 MR. STONE: Five minutes, is that good
21 enough, or do you want a little more?

22 MR. RYCHCIK: I would like ten minutes.

23 (Recess at taken at 3:53 p.m., and

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1 they had had to share with all the other nuclear tests
2 that they had to do.

3 Q. Back in 2003 in the Bradford area, were there
4 other options available?

5 A. You have to be more specific when you say
6 Bradford area.

7 Q. To do a nuclear test?

8 A. You said the Bradford area?

9 Q. For the patients who lived in Bradford.

10 A. Yeah. Could they go somewhere else for nuclear
11 tests?

12 Q. Would you routinely refer them somewhere else?

13 MR. STONE: I'm going to object to any
14 questions regarding what Dr. Kirsch's business
15 relations were with other entities.

16 I have allowed some questioning with
17 regard to his use of the Bradford Regional
18 Medical Center; but, again, I believe his
19 relationship with other entities is irrelevant,
20 and I'm going to instruct him not to answer.

21 MR. RYCHCIK: And that is fine. I am not
22 asking him about his business relationships
23 with any entities.

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1 I am asking him regarding the options
2 available to him and the decisions that he was
3 able to make historically from the standpoint
4 in 2003 where he referred patients for nuclear
5 camera testing, and I think it is relevant.

6 But --

7 MR. STONE: I'm going to instruct him not
8 to answer with regard to other facilities.

9 MR. RYCHCIK: Again, if we could note this
10 page, as well.

11 (Question certified for later discussion.)

12 Q. I may have asked you this: Do you recall when
13 the last conversation you had with Dr. Horsley was
14 regarding the sublease or anything related to a
15 potential arrangement between BRMC and V&S?

16 A. To my recollection, I never discussed the
17 sublease with him. Once I got a copy of the sublease
18 and once we decided to turn it over to our attorneys,
19 I had no further communication with him or any other
20 physician regarding the information in there.

21 Q. Do you have any knowledge of any specific false
22 or fraudulent patient claims made by V&S or Drs.
23 Vaccaro and Saleh?

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1 non-compete agreement, I think it is relevant
2 to his personal knowledge of non-compete
3 agreements, but --

4 MR. STONE: Okay. I mean, to the extent
5 that you are relating it to his evaluation of
6 the non-compete, I think that is a fair
7 question.

8 A. Yes.

9 Q. You say you have been subject to a non-compete
10 agreement in the past?

11 A. Yes.

12 Q. Are you presently subject to a non-compete
13 agreement?

14 MR. STONE: I'm going to object to any
15 further questioning on his current business
16 relationships, because I think now you are
17 getting into a question of what those
18 relationships are; and he is not being offered
19 in this case as an expert on the fair market
20 value of the non-compete. We don't intend to
21 offer him for that purpose; and, therefore, his
22 opinion about it is not really relevant to this
23 case, and I instruct him not to answer.

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1 MR. RYCHCIK: It is relevant if he is the
2 one who filed the lawsuit and has made the
3 allegations. That makes it relevant.

4 MR. STONE: He doesn't have to be a
5 witness to every fact in the case. There are
6 certainly other Relators, and there is
7 certainly expert testimony. Whether your
8 clients have violated the Anti-kickback laws
9 and Stark laws is not dependent on what Dr.
10 Kirsch thinks about it.

11 MR. MULHOLLAND: For what it is --

12 MR. STONE: And for that reason, I don't
13 think it is a proper question to get into his
14 own personal experience on non-compete clauses.

15 MR. MULHOLLAND: From what it is worth,
16 aside from all the other back and forth we have
17 had about these objections, I think you opened
18 the door when you allowed him to answer
19 questions about whether he was a party to a
20 non-compete.

21 That would open the door to any specific
22 questions as to the nature of the non-compete,
23 with whom the non-compete was entered into, and

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1 the terms of the non-compete.

2 MR. STONE: Well, as you know, Mr.

3 Mulholland, what I have been trying to do is I
4 have been trying to give you some latitude in
5 your questioning to give you an ability to ask
6 questions in context, and at the same time,
7 adhere to Judge Cohill's ruling that the
8 relationships that these Relators have with
9 other entities is not relevant to this case and
10 not discoverable, and so, therefore, I don't
11 think I have waived any objection by allowing
12 him to make a limited response to one question.

13 We will again assert that these questions
14 about his relationships with other entities are
15 not relevant to this case, and I'm going to
16 instruct him not to answer.

17 MR. MULHOLLAND: We would take exception
18 with that; but without belaboring the point, I
19 think we can go on.

20 MR. RYCHCIK: So is it correct that you
21 are instructing him not to answer the
22 particulars of any non-compete agreements he
23 has been a party to?

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1 MR. STONE: That's correct.

2 MR. RYCHCIK: Again, if you can note this
3 page, and we will reserve our rights to raise
4 this with the Judge.

5 (Question certified for later discussion.)

6 MR. RYCHCIK: Again, reserving our right
7 to go into additional matters, the questions
8 that I have 'are already ones that you have
9 already objected to.

10 While I vehemently disagree with the
11 stance that you have taken, I will reserve that
12 for another day, and we can go from there.

13 MR. MULHOLLAND: I just have a couple of
14 follow-up questions based on Mr. Rychcik's
15 questions.

16 - - -

17 FURTHER EXAMINATION

18 **BY MR. MULHOLLAND:**

19 Q. Doctor, are you aware that there is more than
20 one nuclear camera at Bradford Regional Medical Center
21 presently?

22 A. I believe there is two.

23 Q. Are you aware that one of the two is currently

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1 subject to the sublease which you challenged in this
2 lawsuit?

3 A. I have no knowledge of that.

4 Q. Are you aware that there is a Philips camera,
5 or a camera manufactured by Philips at the hospital?

6 A. I don't know who manufactured the cameras. I
7 know there are two cameras, because they have two
8 rooms that they can use.

9 Q. When you refer patients to the Medical Center
10 for nuclear cardiology testing, do you ever specify
11 which camera should be used for the patients?

12 A. No.

13 Q. Do you have a preference as to which camera
14 should be used by the patients?

15 A. No.

16 Q. Do you believe that the hospital cameras are at
17 least functionally equivalent to the camera used by
18 Tri-County?

19 MR. STONE: I'm going to object to the
20 question. To the extent that this is about Dr.
21 Kirsch's decision on how to refer particular
22 patients for particular tests, it is irrelevant
23 to this case, and I don't think that -- again,

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1 I'm going to instruct him not to answer based
2 on Judge Cohill's prior ruling.

3 MR. MULHOLLAND: I was asking for his
4 opinion about whether the equipment is
5 functionally equivalent, not about his
6 referrals, nor about his business relationships
7 with Tri-County; and I think it is also
8 relevant to the extent that the Relators would
9 ever challenge any camera that is currently
10 subject to the sublease as to whether or not it
11 is functionally equivalent to other
12 alternatives that they have.

13 For the reasons we have discussed, as well
14 as for the reasons I have just stated, I think
15 it is a very relevant question and not subject
16 to the Judge's order.

17 MR. STONE: Again, what Dr. Kirsch does in
18 a particular case in terms of referring a
19 patient for a particular test? I don't
20 understand what it has to do with the case.

21 MR. MULHOLLAND: I didn't ask what he uses
22 to decide where to send a patient. I asked if
23 in his opinion the equipment was functionally

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1 equivalent to the equipment used by Tri-County.

2 MR. STONE: Well, how would he know that?

3 MR. MULHOLLAND: He is a doctor. I would
4 hope he knows what equipment is used for his
5 patients.

6 MR. STONE: He is not the person
7 administering the test. He has already
8 testified he doesn't specify which camera is to
9 be used. He already said he refers the patient
10 to the nuclear imaging department or whatever
11 for a test.

12 MR. MULHOLLAND: Again, subject to the
13 court reporter marking this page for
14 certification to the Court, I am --

15 MR. RYCHCIK: Again, I don't know if Andy
16 is understanding. You are not asking -- you
17 are not comparing the two pieces of equipment
18 at the hospital.

19 MR. MULHOLLAND: No. I am comparing the
20 hospital's equipment to Tri-County's. You are
21 still objecting to that?

22 MR. STONE: Again, this isn't about the
23 quality of the equipment. This is about the

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1 sublease arrangement between V&S and the
2 hospital.

3 MR. RYCHCIK: And the options in the
4 community are certainly relevant, and the
5 testimony of a referring physician in a small
6 community as to what options are available and
7 the equivalency of the various pieces of
8 equipment are totally relevant.

9 MR. STONE: And what exception to Stark
10 would that be?

11 MR. RYCHCIK: From the standpoint of
12 offering what options are available to Drs.
13 Vaccaro and Saleh to understand the full
14 picture of what those options are is relevant
15 to this case.

16 MR. STONE: Is that a defense to a Stark
17 violation?

18 MR. MULHOLLAND: It may well be a defense
19 to the other allegations you have filed in the
20 Complaint that we made knowing false claims to
21 Medicare and that the predicate, according to
22 your theory in the case, with which we
23 disagree, it is not only a Stark violation but

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1 an Anti-kickback violation.

2 Now, if you are going to instruct him not
3 to answer, I think it is late in the day, and
4 we don't need to go into it any further, other
5 than to reserve our right to take it up with
6 Judge Cohill.

7 MR. STONE: I don't think it serves any
8 purpose to go into Dr. Kirsch's decisions about
9 where he refers his nuclear imaging patients or
10 how he makes those referrals. This is about
11 how Dr. Vaccaro and Dr. Saleh make their
12 referrals.

13 To the extent that you are trying to focus
14 this on Dr. Kirsch, I would object under the
15 order that Judge Cohill has already signed in
16 this case which admonished the Defendants not
17 to refocus this case onto the Plaintiffs and
18 try to punish them for bringing this case, and
19 that is exactly what I see this line of
20 questioning doing.

21 MR. MULHOLLAND: No. We are not trying to
22 punish them.

23 MR. STONE: Every time I let you ask a

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question that you think is in a gray area or
perhaps not a gray area, then you say, I've
opened the door. Well, I'm not going to let
you open the door, because the next thing you
are going to say is, we can ask the next series
of questions based on the previous answer that
you've allowed, and I'm not going to let you do
that.

9 MR. MULHOLLAND: Then why don't we take it
10 up with the Judge? There is no use in
11 belaboring the point.

12 MR. STONE: Okay.

13 (Question certified for later discussion.)

14 Q. Let me ask you a different question, Dr.
15 Kirsch: During your responses to Mr. Rychcik's
16 questions, I believe you said that you ceased having
17 any communications with Dr. Horsley after you turned
18 the matter over to your attorneys. Do you recall
19 something to that effect? Is that -- yes?

A. Communications meaning what?

21 Q. Well, you were responding to a question to Mr.
22 Rychcik at the time, and you said, I believe -- and
23 correct me if I am wrong -- you don't recall any

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1 C E R T I F I C A T E

2 COMMONWEALTH OF PENNSYLVANIA :
 3 COUNTY OF ALLEGHENY : SS.:

4 I, Joy A. Hartman, a Notary Public in and for
 5 the Commonwealth of Pennsylvania, do hereby certify
 6 that before me personally appeared PAUL B. KIRSCH,
 M.D., the witness herein, who then was by me first
 duly cautioned and sworn to testify the truth, the
 whole truth and nothing but the truth in the taking of
 his oral deposition in the cause aforesaid; that the
 testimony then given by him as above set forth was
 reduced to stenotypy by me, in the presence of said
 witness, and afterwards transcribed by computer-aided
 transcription under my direction.

10 I do further certify that this deposition was
 taken at the time and place specified in the foregoing
 11 caption, and signature was not waived.

12 I do further certify that I am not a relative
 13 of or counsel or attorney for any party hereto, nor am
 I otherwise interested in the event of this action.

14 IN WITNESS WHEREOF, I have hereunto set my hand
 15 and affixed my seal of office at Pittsburgh,
 Pennsylvania, on this 23rd day of August, 2007.

16 The foregoing certification does not apply to
 17 any reproduction of this transcript in any respect
 unless under the direct control and/or direction of
 18 the certifying reporter.

19
 20 
 21 Joy A. Hartman, Notary Public
 22 in and for the Commonwealth of
 Pennsylvania

23 My commission expires May 9, 2010.

Commonwealth of Pennsylvania

NOTARIAL SEAL

JOY A. HARTMAN, Notary Public

City of Pittsburgh, County of Allegheny

My Commission Expires May 9, 2010

JOHNSON and MIMBLESS
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